

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

THIS DOCUMENT RELATES TO
01-CV-12257-PBS AND 01-CV-339

Judge Patti B. Saris

**PLAINTIFFS' RESPONSE TO BRISTOL MYERS UNAUTHORIZED MEMORANDUM
ADDRESSING THE ROLE OF LIAISON COUNSEL FOR ALL PLAINTIFFS**

Without seeking leave of the Court, and after briefing is closed, BMS has filed a memorandum addressing the role of liaison counsel. Should the Court review this unauthorized filing, plaintiffs' response is as follows.

Apparently, without any discussion, BMS has been shipping documents to liaison counsel with the secret hope, that in doing so liaison counsel was accepting responsibility for creating a document depository. For the reasons stated in the surreply, plaintiffs and liaison counsel decline to do so and believe the creation of such a depository is ill advised and would greatly increase the costs of this litigation.

Alternatively, BMS asks for an order requiring its costs to be paid for its expenses incurred in carrying out its secret depository mission. No such expenses should be awarded. As noted in the surreply, plaintiffs typically have inspected the defendants' documents first to weed out the useful documents. BMS, by engaging in its secret mission, deprived plaintiffs of the opportunity to make such a selection and wants to bill us for its complete production. This

would be patently unfair which much of the BMS production has been worthless. Out of the approximately 150 boxes produced to date, at least 100, if not more, contain useless, repetitive and often unreadable computer printouts, none of which would have been copied, and the expenses of which should not be foisted on plaintiffs.

In the future, plaintiffs' counsel will inspect such productions and copy what is useful. Suffolk is free to do the same.

DATED: May 28, 2004

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO BRISTOL MYERS UNAUTHORIZED MEMORANDUM ADDRESSING THE ROLE OF LIAISON COUNSEL FOR ALL PLAINTIFFS** to be served on all counsel of record electronically on May 28, 2004, pursuant to Section D of Case Management Order No. 2.

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